

CONTRACT FOR ARCHITECTURAL SERVICES

THIS AGREEMENT, Made and entered into this _____ day of _____, 2005,

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,
A Municipal Corporation, hereinafter
referred to as
"OWNER"

AND

SCHAEFER JOHNSON COX FREY
ARCHITECTURE, hereinafter referred to as
"ARCHITECT"

WHEREAS, The CITY is authorized by law to employ consulting architects and engineers to assist in the plans, supplemental specifications (if required) and the estimates of costs of work for the PROJECT; and

WHEREAS, the **OWNER** desires to have a schematic design prepared as described in RFP No. FP500082 and the design of the proposed modifications to Lawrence Dumont Stadium hereinafter referred to as the "PROJECT"; and

WHEREAS, **ARCHITECT** wishes to provide professional services to the **OWNER** to do such evaluation, preparation of schematic design and construction estimates, and related services therefore:

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties hereto agree as follows:

I. PURPOSE:

The **OWNER** employs the **ARCHITECT** and he agrees to perform all necessary professional services hereinafter set forth in connection with the "PROJECT" of the City of Wichita, Lawrence Dumont Stadium, 300 S Sycamore, Wichita, Sedgwick County, Kansas.

II. BASIC SERVICES:

The **ARCHITECT** shall render all architectural services necessary as set out in **EXHIBIT "A"** a copy of which is attached hereto and which is incorporated herein by reference.

III. THE ARCHITECT AGREES

- A. To provide the various technical and professional services and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").
- B. To attend meetings with the **OWNER** and other local, State and Federal agencies as necessitated by the SCOPE OF SERVICES (Exhibit "A").
- C. To make available during regular office hours, all calculations, sketches and drawings such as the **OWNER** may wish to examine periodically during performance of this Agreement.

- D. To save and hold **OWNER** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **ARCHITECT**, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by **ARCHITECT** and, where relevant to method of payment, to make such material available to the **OWNER**.
- F. To comply with Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the **OWNER'S** Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article V and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").
- H. To complete the services to be performed by **ARCHITECT** within the time allotted for the PROJECT in accordance with Paragraph VI, Time of Completion; EXCEPT that the **ARCHITECT** shall not be responsible or held liable for delays occasioned by the actions or inactions of the **OWNER** or other agencies, or for other unavoidable delays beyond the control of the **ARCHITECT**.
- I. Covenants and represents to be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the **ARCHITECT** under this Agreement. **ARCHITECT** further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by **ARCHITECT**, its agents, employees and subcontractors, under this Agreement, including any addition, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. **ARCHITECT** shall procure and maintain such insurance as will protect the **ARCHITECT** from damages resulting from the negligent acts of the **ARCHITECT**, its officers, and employees in the performance of the professional services rendered under this Agreement. Such policy of insurance shall be in an amount not less than \$100,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory Employer's Liability
\$500,000 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the

ARCHITECT that shall be written in a comprehensive form and shall protect **ARCHITECT** against all claims arising from injuries to persons (other than **ARCHITECT'S** employees) or damage to property of the **OWNER** or others arising out of any negligent act or omission of **ARCHITECT**, its agents, officers, employees or subcontractors in the performance of the professional services under this Agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the **OWNER** before the time **ARCHITECT** starts any work under this Agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the **OWNER** shall be given thirty (30) days written notice by the insurance company before such policy is canceled.

- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **ARCHITECT** agrees to advise the **OWNER**, in writing, of the person designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this Agreement. The **ARCHITECT** shall also advise the **OWNER** of any changes in the person designated Project Manager. Written notification shall be provided to the **OWNER** for any changes exceeding one week in length of time.

The designated Project Manager SHALL coordinate ALL aspects of this Project through the **OWNER'S** Project Manager. Any requests from any other staff agency, which would affect the **ARCHITECTS** time or expense relative to this Project, **MUST** be approved by the **OWNER'S** Project Manager.

IV. THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the **OWNER'S** files at no cost to the **ARCHITECT**. Confidential material so furnished will be kept confidential by the **ARCHITECT**.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the **ARCHITECT**, except as specified in EXHIBIT "A".
- C. To pay the **ARCHITECT** for his services in accordance with the requirements of this Agreement.
- D. To provide the right-of-entry for **ARCHITECT'S** personnel in performing field surveys and observations.
- E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **OWNER** agrees to advise, the **ARCHITECT**, in writing, of the person designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The **OWNER** shall also advise the **ARCHITECT** of any changes in the person designated Project Manager. Written notification shall be provided to the **ARCHITECT** for any changes exceeding one week in length of time.

- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ARCHITECT** in a timely fashion.
- G. To save and hold **ARCHITECT** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions, or negligent acts of **OWNER**, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Contract.

V. PAYMENT PROVISIONS:

The **OWNER** agrees to pay the **ARCHITECT** for services rendered under this Agreement and as specifically detailed in **EXHIBIT "A"**, a total fee established as follows:

- A. For the complete architectural, graphic design, interior design, and mechanical/electrical engineering services and other related items including those items identified in **SCOPE OF SERVICES, EXHIBIT "A"** a single stipulated lump sum fee of seventeen thousand, two hundred fifty thousand dollars (\$17,250.00) which shall constitute complete compensation for the services. This is not an inclusive fee and all reimbursable expenses may be billed at 110% of actual cost.
- B. Payments are payable to the **ARCHITECT** within thirty (30) working days from the date of receipt of invoice. If any invoice is outstanding for more than thirty (30) working days from the date due, the **ARCHITECT** shall have the right, in addition to any and all other rights provided, to refuse to render further services to the **OWNER** and such act or acts shall not be deemed a breach of this agreement. Continued performance and/or completion of work by the **ARCHITECT** under this agreement are contingent upon payment of fees by the **OWNER**. The **OWNER** shall reimburse the **ARCHITECT** for all costs incurred in collection of unpaid accounts, including, without limitation, all reasonable attorney and legal expenses.
- C. When requested by the **OWNER**, the **ARCHITECT** will enter into a Supplemental Agreement for additional services related to the **PROJECT** such as, but not limited to:
 - 1. **ARCHITECT** or witness for the **OWNER** in any litigation, administrative hearing, and other legal proceedings related to the **PROJECT**.
 - 2. Additional design services not covered by the scope of this Agreement.
 - 3. Construction staking, material testing, observation and administration related to the **PROJECT**.
 - 4. A major change in the **SCOPE OF SERVICES** for the **PROJECT**.
- D. If additional work should be necessary, the **ARCHITECT** will be given written notice by the **OWNER** along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except based on a Supplemental

Agreement duly entered into by the parties.

- E. If services are rendered by the **ARCHITECT** for the PROJECT(s) or portions of the PROJECT(s), but the **OWNER** elects to cancel the PROJECT(s) or portions thereof the **ARCHITECT** shall be compensated at an amount in proportion to the services rendered as stated in Paragraph A above, multiplied by the percentage completed.
- F. This fee shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.

VI. TIME OF COMPLETION:

The **ARCHITECT** agrees to complete all Planning Phases of this PROJECT as follows:

- A. For the Schematic Design, Construction Estimates, Construction Schedules phases ninety (90) working days from the date of approval of the Contract pending availability of **OWNER** and staff.
- B. The **OWNER** agrees to cooperate with the **ARCHITECT** in considering drawings and data submitted and to make necessary decisions promptly to facilitate completion in the stipulated time, and the **OWNER** agrees to furnish promptly to the **ARCHITECT** upon written request any approvals and instructions required to be given by the **OWNER** to the **ARCHITECT** under the terms of the Contract.

VII. REVISIONS OF PLANS:

Unless the **OWNER** officially in written form has authorized an increase in funds established for the construction estimates of cost, the **ARCHITECT** agrees to make any such revisions in plans and specifications as are necessary and as are satisfactory to the **OWNER**, to bring the PROJECT within the approved estimated cost, such revisions to be made at his own expense without cost to the **OWNER**, whether or not said plans and specifications have theretofore been approved by the **OWNER**; PROVIDED, that if said plans and specifications have been approved by the **OWNER**, should the **OWNER** desire any material changes in the type of construction or other changes not necessary to be made for the purpose of bringing the cost of the PROJECT within the estimate, the **OWNER** shall pay the **ARCHITECT** the cost of making such revisions.

VIII. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the **OWNER** to terminate this Agreement, upon fourteen days prior written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the **ARCHITECT'S** inability to proceed with the work, or because the services of the **ARCHITECT** are unsatisfactory; PROVIDED, however, that in any case the **ARCHITECT** shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Agreement, in no case shall payment be more than the **ARCHITECT'S** actual costs plus a fee for profit based upon a fixed percentage of the **ARCHITECT'S** actual costs. The **ARCHITECT** may terminate this Agreement upon giving the **OWNER** 30 days prior written notice for breach

by the OWNER of any material term, including but not limited to payment terms.

- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the **OWNER** upon completion or termination of the **ARCHITECT'S** services and payment in full of monies due the **ARCHITECT**, in accordance with this Agreement. The **OWNER** shall not re-use or make any modification of the plans and specifications without the prior written authorization of the **ARCHITECT**. The **OWNER** agrees to hold the **ARCHITECT** harmless from all claims, liability or cost, including reasonable attorney fees and defense costs, which arise out of such further use without the participation of the **ARCHITECT**.
- C. That the services to be performed by the **ARCHITECT** under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the **OWNER**. The **OWNER** shall not assign or transfer rights or interest in this Agreement without specific consent of the **ARCHITECT**.
- D. In the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the **OWNER**, provided, however, that the **ARCHITECT** shall request extensions, in writing, giving the reasons therefore.
- E. It is further agreed that this Agreement and all Contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the **OWNER'S** review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the **ARCHITECT** under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- G. The rights and remedies of the **OWNER** and the **ARCHITECT** provided for under this Agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this Contract, that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.
- I. Unless otherwise stipulated in this Agreement, all subcontractors retained to assist **ARCHITECT** in performing his duties will be paid by the **ARCHITECT**.
- J. The **ARCHITECT** agrees to employ structural, mechanical, civil, and electrical engineers, if necessary, as determined by the **ARCHITECT** and **OWNER** jointly, for design and analysis and to pay the fees as contracted for with the individual engineers for such services. These fees are not reimbursable expenses.

- K. Special Consultants or Subcontractors are those who provide services other than those provided by the **ARCHITECT**. If it is requested that any Special Consultants or Subcontractors be retained on the **OWNER'S** behalf, their charges will be paid separately and directly by the **OWNER**. Invoicing and payment shall be arranged separately between the **OWNER** and the Special Consultants or Subcontractors.
- L. If a firm or firms are separately engaged by the **OWNER** to work under the general direction of the **ARCHITECT**, the **ARCHITECT** shall have no responsibility or technical sufficiency of the services of such separately engaged firms.
- M. It is further agreed that this Agreement and all Contracts entered into under the provisions of this Agreement shall be governed by the laws of the State of Kansas.
- N. Unless otherwise provided in this Agreement, the **ARCHITECT** and employees, or subcontractors shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

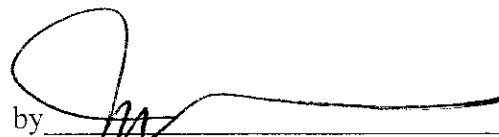
CITY OF WICHITA, KANSAS

Carlos Mayans, Mayor

ATTEST:

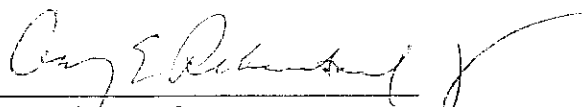
SCHAEFER JOHNSON COX FREY
ARCHITECTURE

Karen Sublett
City Clerk

by 

Joseph A. Johnson, AIA
Senior Vice President

APPROVED AS TO FORM:



Gary E. Rebenstorf
Director of Law

EXHIBIT A

Scope of Work :

The ARCHITECT shall use the following list to guide their efforts in complying with the Project Requirements as outlined in RFP No. FP500082:

The Architect shall:

1. Perform a detailed analysis of the three items listed to be reviewed in the Scope of Work and develop preliminary design concepts appropriate for resolving the issues associated with them.
2. Meet with City and Wichita Baseball representatives and present the ARCHITECTS' preliminary design concepts as listed in Item 1 above. Assist the City and Wichita Baseball representatives in developing a list of priorities and a Final Scope of Work to be included in the Schematic Design including work to be included as alternates if so decided.
3. Complete Schematic Design phase and develop a cost estimate based on that Schematic Design.
4. Present the following to the City:
 - Schematic Design drawings for all the work included in the final Scope of Work
 - Cost Estimate based on the Schematic Design including any alternates
 - Estimated fee for completing the design, bid documents, bidding and contract administration phases. Assume that the work will be bid with several major add-alternates. Include estimated fees for ARCHITECTS' full time representation on the jobsite during critical phases of the work if that is believed to be necessary. The City reserves the right to further negotiate the fee with the selected ARCHITECTS to assure that the fee accurately reflects the work required once the final project scope and funding is determined.
 - Estimated time for completing the design and bid document phases.

Turf Replacement:

1. Evaluate currently available artificial turf systems for estimated total cost of the turf including costs for subgrade preparation and turf installation. Also evaluate turf durability and ease of maintenance, expected service life, appearance, playability, and any other factors that may be important for consideration in selecting the turf system to be used.
2. Present information developed in Step 1 above to City and Wichita Baseball representatives for their use in selecting the turf system to be used in restoring the playing field.
3. Develop a schematic plan and budget for the replacement of all artificial turf in the Stadium based on the selection made by City and Wichita Baseball representatives in Step 2 above.

Concession Stand Remodeling:

1. Evaluate the current concession stands, the products being sold, utilities serving the concession stands, and opportunities to enlarge or modify the concession stands within the physical limitations of the existing facility.
2. Develop menu scenarios that might be appropriate for remodeled concession stands based on what is working well in comparable venues, and develop preliminary designs for any remodeling of the facility that would be required to accommodate those menu scenarios.

3. Present information developed in Steps 1 & 2 above to City and Wichita Baseball representatives for their use in selecting the concepts to be used in remodeling the concession stands.
4. Develop a schematic plan and budget for the remodeling of the concession stands based on the selection made by City and Wichita Baseball representatives in Step 3 above.

Dugout Remodeling

1. Evaluate the current dugouts and opportunities to enlarge or modify them within the physical limitations of the existing facility. Pay particular attention to underground utilities, storm drains etc. in the area that may be impacted by the work.
2. Develop preliminary designs for enlarged dugouts that would be comparable to dugouts used in newer minor league professional baseball facilities, that would meet the expectations of Wichita Baseball, and that would work within the physical limitations of the existing Stadium.
3. Present information developed in Steps 1 & 2 above to City and Wichita Baseball representatives for their use in selecting the concepts to be used in remodeling the dugouts.
4. Develop a schematic plan and budget for the remodeling of the dugouts based on the selection made by City and Wichita Baseball representatives in Step 3 above.

EXHIBIT B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.